

City of Portland

Bureau of Development Services

Land Use Services Division

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Date: August 4, 2008

To: Interested Person

From: John Cole, Land Use Services

503-823-3475 / ColeJA@ci.portland.or.us

NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **DENIED** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 07-110807 LDP

GENERAL INFORMATION

Applicant:William J RiveraWilliam J Jr Rivera

25221 SE Rugg 3327 SE 115th Ave Gresham, OR 97080 Portland, OR 97266

Representative: Joe Ferguson

Boundary Locaters 8124 SE Taylor Ct Portland OR 97215

Site Address: 3327 SE 115TH AVE

Legal Description: LOT 7 BLOCK 3, MCGREWS TR

Tax Account No.: R550001370 Quarter Section: 3342

State ID No.: 1S2E10AC 06800

Neighborhood: Powellhurst-Gilbert, contact James Chasse at 503-762-0863.

Business District: Midway, contact Donna Dionne at 503-252-2017.

District Coalition: E Portland Neighborhood Office, contact Richard Bixby at 503-823-

4550.

Plan District: Johnson Creek Basin

Zoning: R2a, Multi dwelling 2,000 with and Alternative Development Density

Overlay

R5a, Single Dwelling Residence 5,000 with and Alternative

Development Density Overlay LDP Land Division (Partition)

Procedure: Type I, an administrative decision with appeal to the Oregon Land Use

Board of Appeals (LUBA).

Proposal:

Case Type:

The applicant proposes to divide a 23,025 square foot property into two parcels a private street and a stormwater management tract. Parcel 1 will be 6,303 square feet in size. It will support the existing house which is proposed to remain without the attached garage. Parcel two will be 12,284 square feet in size. It is intended to support multi-dwelling residential

construction consistent with the R2 Zone standards. The remainder of the site will be placed in a private street tract that will provide pedestrian and vehicular access to Parcel 2 and a stormwater management tract that will collect stormwater from the paved areas and infiltrate it into the ground. Tree preservation requirements will be met through the preservation of at least 35% of the existing "non-exempt" tree diameter on-site.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110). For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

ANALYSIS

Site and Vicinity: The site is relatively flat and developed with a single dwelling home with attached garage. There are numerous trees on the site as well as open grassy and gravelly areas. The surrounding area is a mixture of single dwelling and multi-dwelling development with some commercial activity to the south along SE Powell Boulevard. SE 115th Avenue is a residential street, lined primarily with single dwelling homes to the north and an apartment complex just west of the site.

Zoning: The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on **July 20, 2007**.

- **1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.
- **2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610 33.612	Lots	Applicable - See findings below
В	33.630	Trees	Applicable - See findings below.
С	33.631	Flood Hazard Area	Not Applicable –This site is not located within a Flood Hazard Area.
D	33.632	Potential Landslide Hazard Area	Not Applicable – This site is not located in a Potential Landslide Hazard Area
E	33.633	Phased Land Division or Staged Final Plat	Not Applicable –Phase Development is not proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
Н	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not applicable – Constraints of Existing development supercede Solar Access requirements.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: The site is split zoned with a portion of the site in the R5 zone and a portion of the site in the R2 zone. The lot and density standards for the two zones differ, therefore the standards of the zone in which each portion of the site are located apply to that area. The density for each zone is calculated separately. Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. Chapter 33.612 contains the lot standards applicable in the Multi-dwelling zones, which includes the R2 zone. These density and lot dimension standards ensure that lots are consistent with the desired character of

each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

Single Dwelling Zone (R5):

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is proposed or required and the site is <u>not</u> within the environmental zone, potential landslide hazard area, or flood hazard area. Only the portion of the site located within the R5 zone is included in this calculation. Therefore, the maximum and minimum density is as follows:

Minimum = 9,000 square feet * $.68 \div 5,000$ square feet = 1.22 (which rounds down to a minimum of 1 lot, per 33.930.020.A)

Maximum = 9,000 square feet * $.85 \div 5,000$ square feet = 1.53 (which rounds down to a maximum of 1 lots, per 33.930.020.B)

The applicant is proposing one lot within the R5 Zone. This standard is therefor being met

Multi Dwelling Zone (R2):

When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. When development other than single-dwelling or duplex development is proposed, minimum and maximum density must be met at the time of development

The total site area located within the R2 shown on the applicant's survey is 13,882 square feet including both Parcel 2 and Tract B. Site area devoted to streets (and their supporting stormwater management areas) is subtracted from the total site area in order to calculate the minimum and maximum density. Subtracting Tract B from density calculations results in 12,284 square feet available for multi-dwelling density allocation This results in a maximum of 6 dwelling units and a minimum of 5 dwelling units available for development on Parcel 2.Because no single family or duplex development is proposed within the R2 zoned portion of the site, the minimum and maximum density standards in Table 120-3 will apply at the time of development Parcel 2.

Lot Dimensions

The lot dimensional standards ensure that: (1) Each lot has enough room for development that meets all the requirements of the zoning code; (2) Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible; (3) The multi-dwelling zones can be developed to full potential; and (4) Housing goals for the City are met.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code for the R5 zone and Chapter 33.612 for the R2 zone):

	R5 Zone	Proposed
	Requirement	Lot 1
Minimum Lot Area	3,000 sq. ft.	6,303 sq.
Maximum Lot Area	8,500 sq. ft.	ft.
Minimum Lot Width*	36 ft.	52.42 ft.
Minimum Lot Depth	50 ft.	119.87 ft.
Minimum Front Lot Line	30 ft.	52.4 ft.

^{*} Width is measured at the minimum front building setback line

	R2 Zone Requirement	Proposed Lot 2
Lots for Multi-Dwelling		
Development		
Minimum Lot Area	4,000 sq. ft.	12,284
Minimum Lot Width*	33 ft.	75
Minimum Lot Depth	70 ft.	160
Minimum Front Lot Line	30 ft.	23

^{*}Width is measured from the midpoints of the side lot lines.

Proposed Parcel 2 does not meet the minimum front lot line standard for multi-dwelling lots within the R-2 Zone. This standard is not met. Therefore these criteria are not met.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. For detailed inventory of trees on site, see Exhibit A-2,

The total non-exempt tree diameter on the site is 61 inches. The applicant proposes to preserve trees 1, 2, and 5, which comprise of 24 inches of diameter, or 39 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-1).

This criterion is met

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.

33.635.100 - Clearing and Grading

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;

- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.

Findings: The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is relatively flat, and is not located within the Potential Landslide Hazard Area. However a new street and associated stormwater system is proposed as part of the land division, which will require grading on the site. The applicant has submitted a Preliminary Clearing and Grading Plan (Exhibit C-2) that depicts the proposed work, including existing and proposed elevation contours, soil stockpile areas, undisturbed areas consistent with the root protection zones of trees to be preserved, per the applicant's Tree Preservation Plan, and the overall limits of disturbed area.

The applicant has proposed an infiltration basin to manage stormwater runoff from the new street and multi-dwelling parking area. However, Site Development has indicated that insufficient information has been submitted to determine that the proposed stormwater tract and infiltration swale are adequately sized to prevent stormwater from impacting neighboring properties (see detailed discussion of stormwater management later in this report).

As shown above, the Preliminary Clearing and Grading Plan does not meet the approval criteria.

33.635.200 - Land Suitability

Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lot can be considered suitable for new development, and this criterion is met.

H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;

33.636.100 Requirements for Tracts and Easements

- A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:
 - 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;
 - 2. The Homeowners' Association for the area served by the tract;

- 3. A public or private non-profit organization; or
- 4. The City or other jurisdiction.

Findings: The following tracts are proposed:

- Tract A: Private Street Tract
- Tract B: Stormwater Management Tract

With a condition that the proposed tracts be owned in common by the owners of Parcels 1 and 2, this criterion can be met.

B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.

Findings: As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tracts and easements described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block for each agreement, substantially similar to the following example:

"A Declaration of	Maintenance agreement for (name of feature) has been recorded a
document no.	, Multnomah County Deed Records."

With the conditions of approval discussed above, this criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; onstreet parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 75 feet of frontage on SE 115th Avenue. SE 115th Avenue is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 350 feet from the site on SE Powell Boulevard via bus 9. Parking is currently allowed on SE 115th Avenue on both sides. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 115th Avenue is improved with a paved roadway, and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. The Office of Transportation has indicated that a dedication of up to 5 feet will be necessary for these improvements. With those improvements, proposed new dwelling units can be safely served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that curb and sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat.

L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 8-inch water main is available in SE 115th Avenue. Water is available to serve the proposed development from the water main in SE 115th Avenue. Parcel 1 has an existing water service from that main. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch PVC public sanitary sewer located in SE 115th Avenue that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main. The Bureau of Environmental services indicated that the location of the existing lateral that serves Parcel 1 is unclear. A supplemental plan showing the location of this lateral must be submitted prior to final plat approval. See Exhibit E-1 for more details.
- The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have <u>not been</u> satisfied by the applicant's stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

Findings: A stormwater tract (Tract B) is proposed.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's <u>Stormwater Management Manual</u>. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The <u>Stormwater Management Manual</u> contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the <u>Stormwater Management Manual</u>, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C-2), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Private Street:** Stormwater will be directed to an infiltration swale located within Tract B, the stormwater tract. The applicant has not submitted stormwater calculations and soil test results that indicate the size of the proposed swale can accommodate the volume of stormwater runoff from the impervious areas of the street. The Site Development Section has indicated that site-specific infiltration test results and sizing calculations following the procedure established in the Stormwater Management Manual must be submitted to demonstrate that the proposed stormwater tract and swale are of adequate size to manage stormwater runoff from the private street.
- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards, with curbs and sidewalks (discussed earlier in this report). The applicant has not provided information showing how stormwater from these new impervious areas will be managed. BES requires infiltration testing from the area of the proposed improvements and a proposed plan for a stormwater facility with supporting calculations before this proposal can be approved.
- Parcel 2: Stormwater from this lot will be directed to an individual soakage trench that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized development. Site Development has indicated conceptual approval of the soakage trench. To ensure that the size and setback requirements of the Stormwater Management Manual can be met, specific information regarding the existing building locations, future building footprints and the location for stormwater facilities shall be provided on the supplemental site plan prior to final plat approval by BES.
- Parcel 1 (the lot with the existing house): The existing house has downspouts that drain variously onto the ground and into underground pipes. Site Development has noted that the downspouts and gutters for the house are in disrepair and that there are no City records indicating where the pipes are directed. Gutters and downspouts must be repaired to meet City standards prior to final plat approval to ensure that the stormwater from the house can get to the disposal points. In addition, at least one of the downspouts is located within the required setback. Modifications will be needed to redirect this and any other downspout that falls within the required setbacks. The applicant is required to finalize plumbing permits prior to final plat approval for

modifications to the stormwater disposal system on the existing house that will result in properly functioning gutters, downspouts, and disposal points, located outside of required setbacks.

As shown by the findings above, the Services and Utilities criteria are not met. The applicant has not provided adequate information demonstrating that stormwater can be appropriately managed for the proposed private street and public street improvements.

Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets	Applicable - See findings below
	and pedestrian	
	connections	
33.654.110.B.2	Dead end streets	Applicable – See Findings below
33.654.110.B.3	Pedestrian	Not applicable - The site is not located within
	connections in	an I zone.
	the I zones	
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or
		required.
33.654.120.C.1	Width of the	Applicable - See findings below.
	street right-of-	
	way	
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed
		or required.
33.654.120.D	Common Greens	Not applicable – No common greens are
		proposed or required.
33.654.120.E	Pedestrian	Not applicable – There are no pedestrian
	Connections	connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or
		required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are
		proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of	Not applicable – There are no existing public
	existing public	dead-end street or pedestrian connections
	dead-end streets	adjacent to the site.
	and pedestrian	
	connections	
33.654.130.C	Future extension	Not applicable – No street extensions are
	of proposed dead-	required to serve abutting sites that are
	end streets and	further dividable.
	pedestrian	
00 (F4 100 P	connections	77
33.654.130.D	Partial rights-of-	Not applicable – No partial public streets are
	way	proposed or required.

Applicable Approval Criteria are:

33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site:
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.

Findings: The site is located between SE Powell and SE Woodward, which have a distance between them of approximately 1,300 feet. There are no other east/west through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west through street provided in the vicinity of the site

The site contains sufficient width to allow the creation of a partial public east-west through street. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east-west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

The site is within the Portland Master Street Plan for the Far SE District. No specific pedestrian or vehicular connection is identified for this property. Therefore, the proposal is consistent with the master street plan.

The only new through pedestrian connections included in the proposal is a new sidewalk along the frontage of the site along SE 115^{th} Avenue. This is a straight-line

For the reasons described above, this criterion is met.

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.

Findings: The proposal includes a private dead-end street, which will be located in the new street tract. As discussed under the findings for through streets above, a new public east-west through street is not required for this proposal. The private dead-end street will serve two lots and up to 7 dwelling units. It is approximately 120 feet in length. This criterion is met.

33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

Findings: The private street will serve 2 lots. The applicant has proposed that a 23-foot wide tract. The <u>Administrative Rules for Private Rights of Way</u> are the standards that govern the construction of private streets. These rules recommend a width of 28 feet for dead-end streets less than 300 feet long, serving properties with the potential density of four or more dwelling units. This width would provide space for both 20 feet of pavement width curbs and a 5-foot wide sidewalk. In this proposal, the applicant will be disposing of stormwater from the private street within an infiltration basin located in a separate tract..

The proposed tract width is not sufficient to accommodate the elements of a street that is presumed to be adequate for one single family lot and one multi dwelling lot with an assigned density of 6 dwelling units by the *Administrative Rules* governing private streets. This insufficient width is cited by the Site Development Section of the Bureau of Development Services in their review of this application. This criterion is not met.

33.654.120.C.3.c. Approval criterion for turnarounds. The turnaround must:

- Be of a size to accommodate expected users, taking into consideration the characteristics of the site such as existing structures, natural features, the length of the street, and the number of housing units served by the street;
- Minimize paved area;
- Provide adequate area for safe vehicular movement; and
- Provide adequate area for safe and convenient movement by bicyclists and pedestrians traveling on the street or traveling from the street to a pedestrian connection.

Findings: No turn-around is included in the proposed private street tract. The City's Private Street Manual does not require any turn-around for a street tract that is 119 feet in length serving two lots. This proposal has been reviewed by both the Site Development Section and the Fire Bureau. Neither agency objected to the lack of turn-around in the proposed street design. This criterion is met.

Utility Location, Extension of Streets, Partial Rights of Way

33.654.130 Additional Approval Criteria for Rights-of-Way

A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the proposed 23-foot width of the private street tract can be provided on the final plat. At this time no specific utility easements adjacent to the street tract have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

General Information about Development Standards and Approval Criteria. The Zoning Code contains two types of regulations: Development standards and Approval criteria.

Approval criteria, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must

exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Information is not being provided on Development Standards at this time because the application has not demonstrated that all of the applicable land division approval criteria have been met.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code	Topic	Contact Information
	Authority		
Water Works	Title 21	Water	503-823-7404
		availability	http://www.water.ci.portland.or.us/
Environmental	Title 17; 2002	Sewer	503-823-7740
Services	Stormwater	availability	http://www.bes.ci.portland.or.us/
	Manual	Stormwater	
		Management	
Fire Bureau	Title 31	Emergency	503-823-3700
	Policy B-1	Access	http://www.fire.ci.portland.or.us/
Transportation	Title 17,	Design of public	503-823-5185
	Transportation	street	http://www.trans.ci.portland.or.us/
	System Plan		
Development	Titles 24 –27,	Building Code,	503-823-7300
Services	Admin Rules for	Erosion Control,	http://www.bds.ci.portland.or.us.
	Private Rights	Flood plain, Site	
	of Way	Development &	
		Private Streets	

CONCLUSIONS

The applicant has proposed a 2-lot partition, as shown on the attached preliminary plan (Exhibit C-2). As discussed in this report, the relevant standards and approval criteria have not been met. More specifically the application has not demonstrated that the following standards and criteria have been met:

- 33.612.200 Minimum Lot Dimensions: Proposed Parcel 2 does not meet the minimum front lot line dimension of 30 feet required in the R2 Zone.
- 33.635.100 (a) Clearing and Grading: Insufficient information is provided to reach a finding that the proposed clearing and grading of the site will not have an adverse impact on neighboring properties.
- 33.653.020 Stormwater Management: Insufficient information is provided to reach a finding that stormwater run-off can be adequately managed in conformance with the City of Portland's Stormwater Management Manual as it applies to the proposed Private Street Tract and required public right of way improvements.
- 33.654.120.C.1 Width of the Street right-of-way: The proposed 23 foot wide private street tract does not allow adequate space for a 20 foot wide driving surface and a 5 foot wide sidewalk as required by the City's adopted private street standards

ADMINISTRATIVE DECISION

Denial of a Preliminary Plan for a 2-lot partition, that will result in lots for multi-dwelling development, a private street tract, and a stormwater management tract, as illustrated with Exhibit C-1.

Decision rendered by: ______ on July 31, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed August 4, 2008

Staff Planner: John Cole

Procedural Information. The application for this land use review was submitted on February 23, 2007, and was determined to be complete on July 16, 2007.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 23, 2007.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended in order to pursue alternative development options including the transfer of density to this site and a larger single family development concept that would include the neighboring property to the north.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at www.portlandonline.com.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 - 1. Applicant's Statement with 1 page addendum
 - 2. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Partial Private Street cross section and grading plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None submitted
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter 3/14/07
 - 3. Time limit expiration letter 5/16/08
 - 4. TRT Engineering Site Design proposal August 30, 2005

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING Site



File No. __LU 07-110807 LDP 3342 1/4 Section ___ 1 inch = 200 feet Scale. 1S2E10AC 6800 State_Id.

(Feb 27,2007)

В

Exhibit _



This site lies within the: JOHNSON CREEK BASIN PLAN DISTRICT

